APPENDIX A

[Filed February 17, 1970]

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 14,342

THE SOUTH CAROLINA TRICENTENNIAL COMMISSION and DANIEL R. McLEOD, as Attorney General of the State of South Carolina, *Appellees*,

v.

ANNIE MARY TIMMONS, *Appellant*.

Order Dismissing Appeal

It appearing to the panel of the Court (consisting of Judges Craven, Butzner and the undersigned), to which appellees' motion to dismiss the appeal and appellant's response thereto was assigned, that appellant has sought an appeal from an order specifically nonappealable under 28 U.S.C.A. § 1447(d) and that, therefore, appellees' motion should be granted, it is

ORDERED, that the appeal is hereby dismissed.

For the Court:

s/ HARRISON L. WINTER
United States Circuit Judge

SEAL

A True Copy, Teste:
SAMUEL W. PHILLIPS, *Clerk*

By MARGARET P. JOHNSON
Deputy Clerk

APPENDIX B

[Filed November 26, 1969]

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

CIVIL ACTION No. 69-1002

THE SOUTH CAROLINA TRICENTENNIAL COMMISSION and DANIEL R. McLEOD, as Attorney General of the State of South Carolina, *Plaintiffs*,

v.

ANNE MARY TIMMONS, *Defendant*.

Order

Plaintiffs have moved before this Court for an order remanding this case to the Court of Common Pleas of Richland County, South Carolina, the state court of general jurisdiction in which this condemnation action was commenced in June of 1969.

The case has been set for trial in that court on Monday, December 1, 1969, and a pretrial hearing was scheduled in that court for November 25. Just prior to the commencement of that hearing, Defendant's attorney filed a petition and notice in this court for the removal of this case to the United States District Court. In her petition for removal, Defendant asked for the convening of a three-judge federal court pursuant to 28 USC 2281 through 28 USC 2284.

On June 10, 1969, this petitioner (who is the landowner in the condemnation action) commenced an equitable proceeding in the Court of Common Pleas for Richland County to test the validity of the condemnation proceeding which had already been commenced in the same court. That proceeding was heard by the state circuit judge on August 19, and he refused to issue an injunction halting the condemnation proceeding. That order is on appeal to the South Carolina Supreme Court.

Once the petitioner selected her forum for testing the validity of the condemnation action, that court acquired jurisdiction, and that jurisdiction became exclusive. *U.S. v. 625.91 Acres of Land in Dunklin County, Mo.*, 49 F. Supp. 997; *Midwest Video v. Campbell*, 250 F. Supp. 158.

Home Federal Savings and Loan Association, which holds a mortgage over the landowner's property, was made a party along with the landowner in condemnation proceeding, but the Association was not named in the removal petition. It would be necessary for the Association to join in the removal petition or be made a party thereto; this has not been done and would be grounds for remand. *Heatherington v. Allied Van Lines, et al.*, USDC, S. C., 1961, 194 F. Supp. 6; *Halsey v. Minnesota-South Carolina Land & Timber Co.*, 54 F. 2d 933.

But these issues need not be the basis for remand, for the sole issue necessary for decision is whether or not there has been compliance with the requirements of the removal procedure. 48 USC 1441 through 1447.

It affirmatively appears from the state court records which were produced in court that more than 30 days have elapsed since the filing of this action in the state court, and there is nothing showing a waiver or any excuse or justification for a delay in filing the removal petition. 28 USCA 1446. I am not ruling on whether a federal issue is involved, for none appears in the proceeding before me.

It Is Accordingly Ordered that this case be remanded to the Court of Common Pleas for Richland County, South Carolina, for trial. 28 USCA 1447.

Donald S. Russell
Donald S. Russell
United States District Judge

Columbia, South Carolina
November 26, 1969

APPENDIX C

[Filed November 25, 1969]

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

CIVIL ACTION NO. ———

THE SOUTH CAROLINA TRICENTENNIAL COMMISSION and DANIEL R. McLEOD, as Attorney General of the State of South Carolina, *Plaintiffs*,

v.

ANNIE MARY TIMMONS, *Defendant*.

Petition

TO THE HONORABLE THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, COLUMBIA DIVISION:

The petition of the Defendant would respectfully show:

1. That the above entitled action has been instituted by the Plaintiffs against your Petitioner by the service of a Notice on the —— day of ———, 19 —, and is now pending in the Court of Common Pleas for Richland County, State of South Carolina, located within the above named division of this Court; that no answer is required by law to be filed or served by the Defendant and none has in fact been filed or served; that said action is now pending a jury trial set for December 1, 1969 at 10:00 A.M. in said Court of Common Pleas for Richland County.

2. That this action is a special statutory proceeding, of a civil nature, to wit, the condemnation of real estate, located within the jurisdiction of this Honorable Court and owned by this Defendant, and that the matter in controversy between the Plaintiffs and your Petitioner, exclusive of interest and costs, exceeds the sum or value of Ten

Thousand ($10,000.00) Dollars, as is alleged in the attached file in the above entitled action, of which the District Courts of the United States have original jurisdiction.

3. That your Petitioner files herewith in this Court a copy of the file in the above entitled action so far as is known to your Petitioner and her undersigned attorney who has just commenced representation of the Petitioner in this action.

4. That very substantial Federal questions are involved in the above entitled action, including but not limited to, questions arising under the Constitution and Laws of the United States regarding the unconstitutionality of certain Statutes of the State of South Carolina and of this action against the Petitioner pursuant thereto, requiring the convening of a Special Constitutional Tribunal consisting of three Federal Judges pursuant to the provisions of sections 28-2281 to 28-2284, U. S. C. A.

5. That your Petitioner files and offers herewith a bond with good and sufficient surety in the sum of Five Hundred ($500.00) Dollars conditioned that the Defendant will pay all costs and disbursements incurred by reason of this removal proceeding should it be determined that the case was not removable or was improperly removed.

WHEREFORE, your Petitioner prays that this Petition and said Bond be accepted as sufficient for removal of the said action to this Court.

Dated at Columbia, S. C.
November 25th, 1969.

ARTHUR T. COLE
Arthur T. Cole
3808 Verner St.
Columbia, S. C. 29204
Attorney for Defendant